

ORIGINAL



RECEIVED
AUG 21 1999
FCC

EX PARTE OR LATE FILED

City of Alpena

CITY ATTORNEY'S OFFICE • 114 SOUTH SECOND AVENUE • ALPENA, MICHIGAN 49707

August 4, 1999

Chairman William Kennard
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ex Parte Filing in cases WT 99-217; CC 96-98

Dear Chairman Kennard:

Please do not adopt the rule proposed in these cases allowing any phone company to serve any tenant of a building and to place their antenna on the building roof.

In some states 70 or more new phone companies have been certified to provide service. Add in the wireless phone companies and under your rule you may have 100 companies allowed to place their wires in a building, and their antennas on the roof-all without the landlord's permission.

The FCC lacks the authority to do this. It would violate basic property rights-a landlord, city or condominium has the right to control who comes on their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country.

The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennas on roofs. Zoning and building codes are purely matters of state and local jurisdiction which under Federalism and the Tenth Amendment you may not preempt.

For example, building codes are imposed in part for engineering related safety reasons. These vary by region, weather patterns and building type-such as the likelihood of earthquakes, hurricanes and maximum amount of snow and ice. If antennas are too heavy or too high, roofs collapse. If they are not properly secured, they will blow over and damage the building, its inhabitants or passers-by.

KEITH WALLACE - CITY ATTORNEY

FRANCIS J. O'DONNELL - ASST. CITY ATTORNEY

ALPENA
MICHIGAN'S ADRENALINE

(517) 354-8949

FAX (517) 354-3369

Similarly, zoning laws are matters of local concern which protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics of antennas on buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns-which we do every day, with success. Everyone wants garbage picked up, no one wants a transfer station. Everyone wants electricity, no one wants a substation near their home.

The application of zoning principles is highly dependent on local conditions. These vary greatly state by state, from municipality to municipality and within municipalities. We have successfully applied these principles and balanced competing concerns for eighty years. Zoning has not unnecessarily impeded technology or the development of our economy, nor will it here. There is simply no basis to conclude that for a brand-new technology (wireless fixed telephones) with a minuscule track record that there are problems on such a massive scale with the 38,000 units of local government in the U.S. as to warrant Federal action.

On rights of way, local management of them is essential to protect the public health, safety and welfare. Congress has specifically prohibited you from acting in this area.

We believe the telephone providers' complaints about rights-of-way management and fees are overblown, as show by the small number of court cases on this-only about a dozen nationwide in the three years since the 1996 Act. With 38,000 municipalities nationwide and thousands of phone companies this number of cases shows that the system is working, not that it is broken.

Finally, we are surprised that you suggest that the combined Federal, state and local tax burden on new phone companies is too high. The FCC has no authority to affect state or local taxes any more than it can affect Federal taxes.

For these reasons please reject the proposed rule and take no action on rights of way and taxes.

Very truly yours,



Keith Wallace
City Attorney

cc: Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner C
Commissioner S
Ms. Magalie Rc
Mr. Jeffrey Stei
Mr. Joel Tauenl
International Tr
Mr. Kevin McC
Mr. Barrie Tabi

Mr. Robert Fogel
Mr. Lee Ruck
nas Frost
Carl Levin
Spencer Abraham
man Bart Stupak

bcc
Alan Bukalashu
City Attorney